

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

GREGORY LEWIS HOLDER,

Petitioner,

v.

Case No.: 09-10973  
Hon. Thomas L. Ludington

CATHERINE S. BAUMAN, Warden,

Respondent.

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**MOTION AND COMBINED BRIEF FOR DEFAULT JUDGMENT**

NOW COMES Petitioner Gregory Holder, by and through his attorney, S. Allen Early, and pursuant to Rule 55(b)(2), Fed. R. Civ. Pro., hereby moves for entry of a default judgment in its favor for the reason that Respondent has failed to respond to Petitioner's petition for habeas corpus by November 13, 2009, as previously ordered in this matter.

On March 16, 2009, Petitioner filed a petition for habeas corpus with this Court. On May 7, 2009, Magistrate Judge Whalen entered an Order Requiring Responsive Pleading to be filed by Respondent by November 13, 2009. Respondent has not filed a responsive pleading.

The Petition for Habeas Corpus in this matter clearly lays out the ineffectiveness of trial counsel and the due process violation which occurred in this case when Petitioner entered an involuntary plea as a result of misrepresentations made to Petitioner by his attorney regarding what the sentence was going to be in this matter.

Rule 55(b)(2), Fed. R. Civ. Pro., provides for entry of default judgments in civil matters. Habeas Corpus Rule 11 provides that the Federal Rules of Civil Procedure may be applied when appropriate to the extent that the rules are not inconsistent with any statutory provision or the habeas corpus rules. Also see Rule 81(a)(4), Fed. R. Civ. Pro.

The misrepresentation regarding sentence in this case is clear error. Petitioner's conviction should be vacated and the case remanded for a new trial.

WHEREFORE Petitioner does respectfully request that the Court grant a default in favor of Petitioner, vacate the conviction and order a new trial, or order such other relief as is fair and just.

LAW OFFICE OF S. ALLEN EARLY

/s/ S. Allen Early  
S. ALLEN EARLY (P13077)  
Attorney for Petitioner  
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(313) 962-2320

Dated: November 20, 2009

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing document was served via CM/ECF, this 20<sup>th</sup> day of November, 2009, upon all counsel of record.

/s/ S. Allen Early  
S. ALLEN EARLY (P13077)  
Counsel for Petitioner

Dated: November 20, 2009